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September 15, 1997

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: ET Docket No. 97-157

Dear Mr. Caton:

On September 9, 1997, Paging Systems, Inc., filed comments in the above-referenced docket. The last date for filing comments in that docket is September 15, 1997.

Paging Systems, Inc. wishes to submit the attached comments which, it believes, more adequately represents its position. Hence, the purpose of the instant comments is to supersede those that were filed on September 9, 1997.

Should any questions arise with regard to this matter, kindly communicate directly with undersigned counsel.

Very truly yours,

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP

By: 

Bruce A. Eisen

Enclosure

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TO: The Commission

replicating the geographic area comparable to their existing NTSC coverage.

3. In the course of the Report and Order, the Commission emphasized its belief that low power television stations were important elements in the framework of television broadcasting, and acknowledged that it would extend certain relief to LPTV licensees whose facilities would be placed into conflict with the new DTV channels. Nevertheless, the Commission's DTV allotment and subsequent revisions result in the elimination of WLMF. Naturally, this will terminate the public service provided by WLMF.

4. WLMF will be displaced by Television Station WPEC(TV), Channel 12, at West Palm Beach, Florida. WPEC has been allotted DTV Channel 13, and WLMF has determined that WPEC's DTV operation will receive predicted interference from WLMF to such an extent that the present WLMF Channel 13 will be displaced. It is noted that on June 9, 1997, WLMF filed an application on FCC Form 346 to propose a construction permit to specify operation on Channel 53 from a new transmitter site. WLMF showed, therein, that there were sound public interest reasons to process and grant the displacement application without delay, but the Commission has

not acted upon WLMF's application. In the absence of a grant of an alternative channel, WLMF will be destroyed.

5. The NPRM proposes the reallocation of Television Channels 60-69 in Miami, a matter which WLMF considers a threat to the continued viability of its operations. As referenced, the DTV allotment has forced WLMF to seek alternative spectrum in order to continue to serve Miami, and the removal of Channels 60-69 from the broadcast services, with some other channels to be auctioned off for unspecified uses, nearly insures WLMF's demise. The idea that the subject channels will be reallocated to commercial services through competitive bidding, without regard to the needs of WLMF and its viewers, infringes upon WLMF's basic rights to compete locally in Miami as a voice within the community.

6. WLMF strongly believes that Channels 60-69 should remain allocated for broadcast use. In particular, one of the remaining channels within the band in South Florida should be used to accommodate WLMF which will be displaced by the new DTV channel allocations. It is an interesting paradox that while WLMF is to be forced from the air in Miami by DTV allotment, the Commission may auction the remaining frequencies in the Channels 60-69 band to successful bidders who would not be precluded from

using the channels to deliver television signals. As noted previously, WLMF has sought relief by applying for Channel 53. If that channel proves unavailable, the Commission should not foreclose WLMF from utilizing Channels 60-69, especially in light of the fact that WLMF's service to the public will have been extinguished by a DTV allotment.

7. The Commission may take official notice of the fact that low power television stations are often located within Channels 60-69. Moreover, many displaced from lower channels, such as WLMF, may have to seek an assignment in that band, especially during the transition where every full power station will operate on two channels. Therefore, WLMF urges the Commission to consider allowing it to migrate to an appropriate channel within the Channel 60-69 band, rather than to face displacement and the loss of its valuable programming to the South Florida area.

8. Clearly, there is a need for the Commission to appreciate the critical position in which WLMF finds itself. WLMF is faced with extinction. Any spectrum within the Miami viewing area which ultimately becomes the subject of competitive bidding should be auctioned with the understanding that some of the channels may have to be held back in light of the transition to

digital television. Channels 60-69 in Miami should be considered a clear and viable alternative to the loss of WLMF's programming to the community. As referenced, supra, the Commission has acknowledged the importance of low power television stations within the Report and Order and should stand true to its beliefs by protecting WLMF. Channels 60-69 offer a clear remedy to displacement from the Miami market, and the prospect of relief surely serves the public interest. Channels 60-69 cannot be reallocated until WLMF is given a channel. Any other conclusion would contravene the Congress of the United States which has encouraged the Commission to adequately address the interests of low power television stations.

9. WLMF operates under a privilege granted by the Federal Communications Commission. It does not own the right to any spectrum. No one does. See, The Communications Act of 1934, as amended, 47 USCA §301 (1985). The reallocation of Channels 60-69 is an allocation decision that nevertheless effectively denies WLMF the rights which it has legitimately obtained from the Federal government. The great difficulty with the NPRM is that there is no valid basis upon which to believe that the Commission accurately measures the desires of listeners and consumers in the Miami area. In reallocating this spectrum, the Commission will

deny valuable service to South Florida consumers, while at the same time destroying WLMF's economic viability.

10. The public interest is not immutable. The Court has held that Congress and the Commission, as its agent, must remain in a posture of flexibility to chart a workable "middle course" in the quest to preserve a balance between essential public accountability and desirable private control of the media. See, Columbia Broadcasting System, Inc. v Democratic National Committee, 412 US 94, 120 (1973). WLMF has been nothing but a compliant Commission licensee. Nevertheless, the Commission appears set on a course to effectively cancel its license despite its history of compliance. If WLMF is terminated by a DTV displacement, it will be no different than a licensee who faces a revocation of its license. In this regard, Section 312(c) of the Communications Act requires the Commission to convene a hearing before revoking a license. Absent such safeguards to protect the status of WLMF, the Commission will not only violate the Act, but also WLMF's Constitutional rights of substantive due process under the Fifth Amendment.

In light of the foregoing, WLMF requests the Commission to consider these comments and to issue a Report and Order which adopts the suggestions urged.

Respectfully submitted,

PAGING SYSTEMS, INC.

By: 
Bruce A. Eisen

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CERTIFICATE OF SERVICE

I, Toni R. Daluge, a secretary in the law office of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 15th day of September, 1997, a copy of the foregoing Comments of Paging Systems, Inc., has been hand-delivered to the following:

Sean White, Esq.
Office of Engineering & Technology
Federal Communications Commission
2000 M Street, N.W.
Room 427
Washington, D. C. 20554



Toni R. Daluge